

COVER LETTER - Page 1 of 2  
571-273-8300

April 10, 2006

To: Office of Petitions  
Regarding Patent Application  
#10/648,409

On March 10, 2006, I received  
Notice of Abandonment. I believe  
this is improper for at least two  
reasons —

① I did NOT receive any Office  
letter mailed July 28, 2005,

② I did reply, in a timely manner,  
to the Office letter received by  
me in ~~the~~ early November 2005.  
My reply was mailed November 28,  
2005, by Express Mail USPS,  
and delivered in Alexandria, Va.  
at 9:10 AM, November 30, 2005

April 10, 2006

COVER LETTER - page 2

I have discussed this matter with Examiner Janet Wilkens, who says she never received the materials I mailed on November 28, 2005. On March 30, 2006 she suggested I fax these materials, and supporting materials, to you, citing rule 1.181.

Materials in this FAX are :

- ① 9 page handwritten letter Nov 28, 2005
- ② pages #1 and #2, revisions to specification and Claim
- ① and ② Mailed Nov 28, 2005
- ③ pages #1 and #2, marked up copy
- ④ USPS Express Mail delivery confirmation
- ⑤ Office letters received by me in Nov 2005, and March 2006.

Thanks,  
Steve Smith

FROM : Steve Smith  
US Postal Service

PHONE NO. : 324 6123  
3/23/2006 12:27 PAGE 001/001

Apr. 11 2006 10:00AM P3  
Fax Server

RECEIVED  
CENTRAL FAX CENTER

APR 11 2006



**UNITED STATES  
POSTAL SERVICE**

Date: 03/23/2006

Fax Transmission To: Postal Customer  
Fax Number: 503-324-6123

Dear: Postal Customer:

The following is in response to your 03/23/2006 request for delivery information on your Express Mail item number EU39 0659 579U S. The delivery record shows that this item was delivered on 11/30/2005 at 09:10 AM in ALEXANDRIA, VA 22313 to A YOUNG. The scanned image of the recipient information is provided below.

Signature of Recipient: Delivery Section  
*Anthony Young*  
*Anthony Young*  
*P.O. OFFICE 3*  
**SCANNED**  
Address of Recipient: P. O. BOX 1450  
Alexandria, VA 22313

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely

United States Postal Service

Nov 28, 2005

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia

Regarding Application 10/648,409

Dear Sir:

In July I received a notice of non-compliant amendment. I had a telephone conference with my examiner, Janet M. Wilkins in which she explained what I needed to submit to correct the situation. It was a fairly simple matter; I believed I understood what she wanted, and I made the changes and submitted the requested materials on July 28, 2005. On November 7, 2005 I received a Failure to Acceptably Respond to Notice of Non-compliant Amendment. This notice had items 1, 2, and 4 checked (X) as causing the amended document to be non-compliant. I immediately

Nov 28, 2005

called my examiner, Janet M. Wilkens. Her voice mail said, "This is Janet Wilkens, it's Nov 4, and I will be back in the office February 3." So I call her supervisor Lona Main to discuss the situation. Essentially she told me that the materials I submitted on July 28, 2005 were unsatisfactory, and that I would have to make corrections, and ② pay \$795.00 or \$1000.00 +, she didn't know exactly, or my application would be ~~abandoned~~ abandoned. Furthermore, she refused to explain what it meant on the non-compliant notice where it was referring to underlines, brackets, and strike throughs. She said it was up to me to figure

page 2

Nov 28, 2005

it out, and since I couldn't,  
then I should hire a lawyer.

By this time I'm beginning to think  
this situation is ridiculous and  
absurd. We end the conversation.

I can't believe that my patent  
application is going to be rejected  
because some word is not bracketed  
or underlined. Janet Wilkane NEVER  
said anything to me about brackets,  
underlines, or strikeouts. But if  
that is necessary, I certainly can  
do it. OK, I decide to call  
Dai Johnson, whose signature and  
phone number appear on the Nov 7  
Failure to Acceptably Respond notice.  
What a pleasant surprise! Dai Johnson  
was very courteous, patient, and

Page ③

Nov 28, 2005

helpful. She quickly explained about the brackets, underlines, and strikeouts, and about exactly where to put the page number and date, and signature, so that the pages in question (2 pages exactly) would be "compliant". So I have made the requested changes, (it was so simple, it took me about 10 minutes), and I am sending them to you today by Express Mail. I have a big problem with the \$795.00. I think it is unfair, unforeseen, and exorbitant under these circumstances, and I will tell you why. ① All the relevant substantive material was submitted as requested in a timely manner,

page ④

Nov 28, 2005

on July 28, 2005, within the 30 days allowed for reply. Anyone would have been able to determine what was new or old, and Janet Wilkens, my examiner, who was familiar with the material, certainly knew. If it is just a matter of brackets, or underlines so that you folks can more easily computerize the info, should I have to pay \$795.00?

② If there was a problem, why couldn't I have been notified sooner than 3 months? Why couldn't I have been notified in August? Jai Johnson said a 1 month time extension fee was \$60.00 I don't think I should have to buy any time, but \$60.00 is certainly more reasonable.

③ My examiner, Janet Wilkens is

page ⑤



Nov 28, 2005

gone until Feb 3, 2006. I have been told she is on maternity leave. I wonder if she was able to devote full attention to her work as her pregnancy advanced in the hot summer time. At any rate, for her to take 3 months to respond to my July 28, 2005 submission seems excessive. And with Mrs Wilkerson gone until Feb 3, there is no one who is familiar with my application.

- ④ I started this process by filing a Provisional Patent Application on August 26, 2002, over 3 years ago. During this period, there have been many communications back and forth between me and the Patent Office. I have ALWAYS responded in a timely manner. The Patent Office usually takes 3, 4, or more months

page (6)

Nov 28, 2005

to respond in return. So when I didn't get an immediate response to my July 28, 2005 submission, I was not concerned. Janet Wilkens never told me that if she did not approve the materials I sent that my time for reply would end July 31, 2005, regardless of whether I was informed earlier or later. The penalty was totally unforeseen by me.

- ⑤ In addition to not getting all the relevant information from Janet Wilkens, I have been getting conflicting information from Patent Office employees. For example — Yoi Johnson told me to sign each page with my signature and date. She said I needed to do that to make it compliant. She also

page ⑦

Nov. 28, 2005

said to be sure to put the application number on each page. Fine! No problem! But my examiner Janet Wilkerson said it wasn't necessary to put the application number on each page, and she NEVER said anything about a signature. Look, I don't care, I will do it any way you want it. It seems like not everybody is on the same page. I shouldn't be penalized for that.

⑥ Finally, I would like to say that my idea, concept, invention, whatever you want to call it is

page ⑧

Nov 28, 2005

a good thing. Millions of baby-boomers with weak ankles, knees, & hips will be able to extend their mobility. And people of any age will appreciate the upper body exercise benefit of using my invention. I discovered and developed it on my own, nobody else has anything like it, and I deserve a patent for it.

Sincerely,  
Steven A. Smith

P.S. I have NEVER changed the abstract.

page (9)

700



## UNITED STATES PATENT AND TRADEMARK OFFICE

10/648,409

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1460  
Alexandria, VA 22313-1460  
www.uspto.gov

Received Nov 7, 2005

**Failure to Acceptably Respond to  
Notice of Non-Compliant Amendment (37 CFR 1.121)  
No New Time Period for Reply is Provided**

The amendment document filed on July 28, 2005 fails to provide the corrective action required by the prior Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 7/1/05. The amendment, including both the originally filed amendment and the amendment filed in response to the prior notice, is still considered to be non-compliant under 37 CFR 1.121. In order for the amendment document to be compliant, correction of the item(s) listed below is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

The period for reply continues to run from the mailing date of the prior Notice of Non-Compliant Amendment. The corrections listed below must be timely filed to avoid abandonment of the application. No new time period for reply is provided in this communication. See the Manual of Patent Examining Procedure (MPEP) § 714.03.

If the period for reply set forth in the prior Notice of Non-Compliant Amendment has expired, this application will become abandoned unless applicant: (1) corrects the deficiency, and (2) obtains an extension of time under 37 CFR 1.136(a). In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in the prior Notice of Non-Compliant Amendment (37 CFR 1.121).

**THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:**

☒ 1. Amendments to the specification:

- ☐ A. Amended paragraph(s) do not include markings.  
☐ B. New paragraph(s) should not be underlined.

☒ C. Other: Specification must be submitted with underlines, brackets, and strikethroughs to show changes.  
See website below for further explanation.

Doi → underline = new  
bracket = old  
strikethrough = old

☒ 2. Abstract:

- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.  
☒ B. Other: must include markings to show changes.

Never changed

☐ 3. Amendments to the drawings:

- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).  
☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.  
☐ C. Other:

☒ 4. Amendments to the claims:

- ☐ A. A complete listing of all of the claims is not present.  
☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims).  
☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).  
☐ D. The claims of this amendment paper have not been presented in ascending numerical order.  
☒ E. Other: Claim 1 must show brackets, underlines, and strikethroughs to show changes.

571  
272  
6869

Janet Wilkins  
out till  
Feb 3

John

571-272-6601

Doi Johnson

Signature

72  
6867

Janet Wilkens ✓ Personal FAX  
703 273 6869 given time 3/23/06

3/30/06

Received 3/10/06  
Notice of Abandonment

Application No.

10/648,409

Examiner

Janet M. Wilkens

Applicant(s)

SMITH, STEVEN ANTHONY

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on July 28, 2005. *I did not receive*
- (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
- (d) ☒ No reply has been received. *Replied to Nov office letter by USPS Express Mail Nov 28, 2005*
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due. The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
- (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
- (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

3/23/06 I called, left message to please return call

→ phone 571-272-6869

Janet Wilkens  
JANET M. WILKENS  
PRIN Y EXAMINER  
ATU 23637

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.